

## CHAPTER 134

## BUILDING RESTRICTIONS

## ZONING COMMISSION

S. F. 665

AN ACT granting to any city or town, including cities acting under the commission plan of government and special charter cities, the power to appoint a zoning commission and to prescribe its duties; to divide the city or town into districts with respect to the development and uses of the property therein; and to adopt uniform rules for such property which may affect the general welfare; to provide for the appointment of a board of adjustment and to prescribe its duties; to institute appropriate action or proceedings in case of violation of this act or of any ordinance or other regulation made under authority conferred thereby; and providing for appeals from the action of the board of adjustment, and from the city council, and prescribing notice and hearing of such appeal; also providing that when any city or town avails itself of the provisions of this act, the provisions of chapter one hundred thirty-eight (138) acts of the thirty-seventh general assembly and acts amendatory thereof, shall be inoperative and void.

*Be it enacted by the General Assembly of the State of Iowa:*

1     **SECTION 1. Building restrictions.** That for the purpose of pro-  
 2 moting the health, safety, morals or the general welfare of the com-  
 3 munity, any city or town, including cities acting under the commission  
 4 plan of government and special charter cities, is hereby empowered  
 5 to regulate and restrict the height, number of stories and size of  
 6 buildings and other structures, the percentage of lot that may be  
 7 occupied, the size of yards, courts and other open spaces, the density  
 8 of population, and the location and use of buildings, structures and  
 9 land for trade, industry, residence or other purposes.

1     **SEC. 2. Districts and restrictions therein.** For any or all of said  
 2 purposes the local legislative body, hereinafter referred to as the  
 3 council, may divide the city or town into districts of such number,  
 4 shape and area as may be deemed best suited to carry out the purposes  
 5 of this act; and within such districts it may regulate and restrict the  
 6 erection, construction, reconstruction, alteration, repair or use of build-  
 7 ings, structures or land. All such regulations and restrictions shall  
 8 be uniform for each class or kind of buildings throughout each district,  
 9 but the regulations in one district may differ from those in other  
 10 districts.

1     **SEC. 3. Standard for regulations.** Such regulations shall be made  
 2 in accordance with a comprehensive plan and designed to lessen con-  
 3 gestion in the streets; to secure safety from fire, panic and other dan-  
 4 gers; to promote health and the general welfare; to provide adequate  
 5 light and air, to prevent the overcrowding of land; to avoid undue  
 6 concentration of population; to facilitate the adequate provision of  
 7 transportation, water, sewerage, schools, parks and other public re-  
 8 quirements. Such regulations shall be made with reasonable con-  
 9 sideration, among other things, as to the character of the area of the  
 10 district and the peculiar suitability of such area for particular uses,  
 11 and with a view to conserving the value of buildings and encouraging  
 12 the most appropriate use of land throughout such city or town.

1     **SEC. 4. Hearings.** The council of such city or town shall provide  
2 for the manner in which such regulations and restrictions and the  
3 boundaries of such districts shall be determined, established and en-  
4 forced, and from time to time amended, supplemented or changed.

5     However, no such regulation, restriction or boundary shall become  
6 effective until after a public hearing in relation thereto, at which  
7 parties in interest and citizens shall have an opportunity to be heard.

8     At least fifteen days notice of the time and place of such hearing  
9 shall be published in a paper of general circulation in such city or town.

1     **SEC. 5. Amendments and changes.** Such regulations, restrictions  
2 and boundaries may, from time to time, be amended, supplemented,  
3 changed, modified or repealed. In case, however, of a protest against  
4 such change signed by the owners of twenty per cent or more either  
5 of the area of the lots included in such proposed change, or of those  
6 immediately adjacent in the rear thereof extending the depth of one  
7 lot or not to exceed 200 feet therefrom, or of those directly opposite  
8 thereto, extending the depth, of one lot or not to exceed 200 feet from  
9 the street frontage of such opposite lots, such amendment shall not  
10 become effective except by the favorable vote of at least three-fourths  
11 of all the members of the council.

12     The provisions of the previous section relative to public hearings  
13 and official notice shall apply equally to all changes or amendments.

1     **SEC. 6. Zoning commission.** In order to avail itself of the powers  
2 conferred by this act, the council shall appoint a commission, to be  
3 known as the zoning commission, to recommend the boundaries of  
4 the various original districts, and appropriate regulations and restric-  
5 tions to be enforced therein. Where a city plan commission already  
6 exists, it may be appointed as the zoning commission.

7     Such commission shall, with due diligence, prepare a preliminary  
8 report and hold public hearings thereon before submitting its final  
9 report; and such council shall not hold its public hearings or take  
10 action until it has received the final report of such commission.

11     After the adoption of such regulations, restrictions and boundaries  
12 of districts, the zoning commission may, from time to time, recom-  
13 mend to the council amendments, supplements, changes or modifica-  
14 tions.

1     **SEC. 7. Board of adjustment.** The council shall provide for the  
2 appointment of a board of adjustment and in the regulations and  
3 restrictions adopted pursuant to the authority of this act shall pro-  
4 vide that the said board of adjustment may in appropriate cases and  
5 subject to appropriate conditions and safeguards make special excep-  
6 tions to the terms of the ordinances in harmony with its general  
7 purpose and intent and in accordance with general or specific rules  
8 therein contained and provide that any property owner aggrieved  
9 by the action of the council in the adoption of such regulations and  
10 restrictions may petition the said board of adjustment direct to mod-  
11 ify regulations and restrictions as applied to such property owners.

12     The board of adjustment shall consist of five members each to be  
13 appointed for a term of five years, excepting that when the board  
14 shall first be created one member shall be appointed for a term of  
15 five years, one for a term of four years, one for a term of three years,  
16 one for a term of two years, and one for a term of one year. Members  
17 shall be removable for cause by the appointing authority upon writ-

18 ten charges and after public hearing. Vacancies shall be filled for  
19 the unexpired term of any member whose term becomes vacant.

20 The board shall adopt rules in accordance with the provisions of  
21 any ordinance adopted pursuant to this act. Meetings of the board  
22 shall be held at the call of the chairman and at such other times as  
23 the board may determine. Such chairman, or in his absence, the  
24 acting chairman, may administer oaths and compel the attendance  
25 of witnesses. All meetings of the board shall be open to the public.  
26 The board shall keep minutes of its proceedings, showing the vote  
27 of each member upon each question, or if absent or failing to vote,  
28 indicating such fact, and shall keep records of its examinations and  
29 other official actions, all of which shall be immediately filed in the  
30 office of the board and shall be a public record.

31 Appeals to the board of adjustment may be taken by any person  
32 aggrieved or by any officer, department, board or bureau of the  
33 municipality affected by any decision of the administrative officer.  
34 Such appeal shall be taken within a reasonable time as provided by  
35 the rules of the board by filing with the officer from whom the appeal  
36 is taken and with the board of adjustment a notice of appeal specifying  
37 the grounds thereof. The officer from whom the appeal is taken  
38 shall forthwith transmit to the board all the papers constituting the  
39 record upon which the action appealed from was taken.

40 An appeal stays all proceedings in furtherance of the action ap-  
41 pealed from, unless the officer from whom the appeal is taken cer-  
42 tifies to the board of adjustment after the notice of appeal shall have  
43 been filed with him that by reason of facts stated in the certificate  
44 a stay would in his opinion cause imminent peril to life or property.  
45 In such case proceedings shall not be stayed otherwise than by a  
46 restraining order which may be granted by the board of adjustment  
47 or by a court of record on application on notice to the officer from  
48 whom the appeal is taken and on due cause shown.

49 The board of adjustment shall have the following powers:

50 (1) To hear and decide appeals where it is alleged there is error  
51 in any order, requirement, decision or determination made by an  
52 administrative official in the enforcement of this act or of any ordi-  
53 nance adopted pursuant thereto.

54 (2) To hear and decide special exceptions to the terms of the  
55 ordinance upon which such board is required to pass under such  
56 ordinance.

57 (3) To authorize upon appeal in specific cases such variance from  
58 the terms of the ordinance as will not be contrary to the public inter-  
59 est, where owing to special conditions a literal enforcement of the  
60 provisions of the ordinance will result in unnecessary hardship, and  
61 so that the spirit of the ordinance shall be observed and substantial  
62 justice done.

63 In exercising the above mentioned powers such board may, in  
64 conformity with the provisions of this act, reverse or affirm, wholly  
65 or partly, or may modify the order, requirement, decision or determi-  
66 nation appealed from and may make such order, requirement, deci-  
67 sion or determination as ought to be made, and to that end shall have  
68 all the powers of the officer from whom the appeal is taken.

69 The concurring vote of three members of the board shall be neces-  
70 sary to reverse any order, requirement, decision or determination of

Note: The word "enforcement" in line 59 evidently should be "enforcement".

71 any such administrative official, or to decide in favor of the applicant  
72 on any matter upon which it is required to pass under any such  
73 ordinance or to effect any variation in such ordinance.

74 Any person or persons, jointly or severally aggrieved by any deci-  
75 sion of the board of adjustment under the provisions of this act, or  
76 any taxpayer, or any officer, department, board or bureau of the mu-  
77 nicipality, may present to a court of record a petition, duly verified,  
78 setting forth that such decision is illegal, in whole or in part, specify-  
79 ing the grounds of the illegality. Such petition shall be presented  
80 to the court within thirty days after the filing of the decision in the  
81 office of the board.

82 Upon the presentation of such petition, the court may allow a  
83 writ of certiorari directed to the board of adjustment to review such  
84 decision of the board of adjustment and shall prescribe therein the  
85 time within which a return thereto must be made and served upon  
86 the relator's attorney, which shall not be less than ten days and may  
87 be extended by the court. The allowance of the writ shall not stay  
88 proceedings upon the decision appealed from, but the court may, on  
89 application, on notice to the board and on due cause shown, grant a  
90 restraining order.

91 The board of adjustment shall not be required to return the original  
92 papers acted upon by it, but it shall be sufficient to return certified  
93 or sworn copies thereof or of such portions thereof as may be called  
94 for by such writ. The return shall concisely set forth such other  
95 facts as may be pertinent and material to show the grounds of the  
96 decision appealed from and shall be verified.

97 If upon the hearing which shall be tried de novo it shall appear  
98 to the court that testimony is necessary for the proper disposition  
99 of the matter, it may take evidence or appoint a referee to take such  
100 evidence as it may direct and report the same to the court with his  
101 findings of fact and conclusions of law, which shall constitute a part  
102 of the proceedings upon which the determination of the court shall  
103 be made. The court may reverse or affirm, wholly or partly, or may  
104 modify the decision brought up for review.

105 Costs shall not be allowed against the board, unless it shall appear  
106 to the court that it acted with gross negligence or in bad faith or  
107 with malice in making the decision appealed from.

108 All issues in any proceedings under this section shall have prefer-  
109 ence over all other civil actions and proceedings.

1 SEC. 8. Action to restrain. In case any building or structure is  
2 erected, constructed, reconstructed, altered, repaired, converted or  
3 maintained; or any building, structure or land is used in violation of  
4 this act or of any ordinance or other regulation made under authority  
5 conferred thereby, the council, in addition to other remedies, may  
6 institute any appropriate action or proceedings to prevent such un-  
7 lawful erection, construction, reconstruction, alteration, repair, con-  
8 version, maintenance or use, to restrain, correct or abate such viola-  
9 tion, to prevent the occupancy of said building, structure or land, or  
10 to prevent any illegal act, conduct, business or use in or about such  
11 premises.

1 SEC. 9. Priority of statutes. Wherever the regulations made under  
2 authority of this act require a greater width or size of yards, courts  
3 or other open spaces, or require a lower height of building or less

4 number of stories, or require a greater percentage of lot to be left  
5 unoccupied, or impose other higher standards than are required in  
6 any other statute or local ordinance or regulation, the provisions of  
7 the regulations made under authority of this act shall govern.

8       Wherever the provisions of any other statute or local ordinance or  
9 regulation require a greater width or size of yards, courts or other  
10 open spaces, or require a lower height of building or a less number of  
11 stories, or require a greater percentage of lot to be left unoccupied,  
12 or impose other higher standards than are required by the regula-  
13 tions made under authority of this act, the provisions of such statute  
14 or local ordinance or regulation shall govern.

1       **SEC. 10. Applicability of statutes.** When any city or town shall  
2 have taken advantage of and proceeded under the provisions of this act  
3 then chapter 138 of the acts of the 37th general assembly and acts  
4 amendatory thereof shall be no longer operative as to such city or  
5 town.

1       **SEC. 11. Publication clause.** This act, being deemed of immediate  
2 importance, shall take effect and be in force when published in the  
3 Des Moines Capital and the Des Moines Register, newspapers pub-  
4 lished in Des Moines, Iowa.

Approved April 24, A. D. 1923.

I hereby certify that the foregoing act was published in the Des Moines Capital  
April 25, 1923, and the Des Moines Register April 26, 1923.

W. C. RAMSAY, *Secretary of State.*

## CHAPTER 135

### COMMISSION FORM OF CITY GOVERNMENT

H. F. 379

AN ACT to amend section one (1) and to repeal section four (4) of chapter one hundred  
nine (109), acts of the thirty-ninth general assembly (S. C. C. 4219 and 4219-a2),  
relating to election of officers of cities under the commission form of government.

*Be it enacted by the General Assembly of the State of Iowa:*

1       **SECTION 1. Repeal.** That section four (4), chapter one hundred  
2 and nine (109) acts of the thirty-ninth general assembly be and the  
3 same is hereby repealed.

1       **SEC. 2. Grouping of departments.** That chapter 109, acts of the  
2 thirty-ninth general assembly be and the same is hereby amended by  
3 striking therefrom the phrase, "superintendent of accounts and  
4 finances, and parks and public property" wherever it appears in said  
5 act and inserting in lieu thereof the phrase, "superintendent of ac-  
6 counts, finances and public safety"; also, by striking from section one  
7 (1) of said act the phrase, "superintendent of public safety and  
8 streets and public improvements" wherever it therein appears and  
9 by inserting in lieu thereof the phrase, "superintendent of parks,  
10 public property, streets and improvements"; also, by striking from